STATE OF MICHIGAN

COURT OF APPEALS

SANDRA L. MOORE,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
February 23, 2006

No. 257560
Oakland Circuit Court
LC No. 2002-044051-NZ

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) in this employment discrimination case. Plaintiff, the only female journeyman electrician employed at defendant's Pontiac Truck Group facility, brought this action alleging claims for sex discrimination, sexual harassment – hostile work environment, and retaliation,[1] contrary to Michigan's Civil Rights Act (CRA), MCL 37.2101 *et seq.* We affirm.

Plaintiff first argues that the trial court erred in holding that any claims arising more than three years before June 14, 2002, were barred by the statute of limitations. A trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by the statute of limitations. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). In determining whether summary disposition was properly granted under MCR 2.116(C)(7), this Court considers all of the documentary evidence submitted by the parties and accepts as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Id.* at 647-648.

[1] Plaintiff also brought a claim for disability discrimination, but that claim is not at issue on appeal.

A claim based on employment discrimination in violation of the CRA must be filed within three years of when it accrued. MCL 600.5805(10); *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 74; 630 NW2d 650 (2001). Here, several of plaintiff's claims are based on her alleged absence from the workplace on February 13, 1999, and her termination on February 16, 1999. Although plaintiff's complaint was filed on February 12, 2002, defendant was not served until June 14, 2002. In *Gladych v New Family Homes, Inc*, 468 Mich 594, 595; 664 NW2d 705 (2003), the Supreme Court held that "the mere filing of a complaint is insufficient to toll the statute of limitations," and that, "[i]n order to toll the limitations period, one must also comply with the requirements of [MCL 600.5856]." The version of MCL 600.5856[2] at issue here provided that the statute of limitations is tolled only if

> (1) the complaint is filed and a copy of the summons and complaint are served on defendant, (2) jurisdiction is otherwise acquired over defendant, (3) the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service (but no longer than ninety days after the summons and complaint are received by the officer), or (4) if, during the applicable notice period under MCL 600.2912b, a claim would be barred by the statute of limitations, but only for the number of days equal to that in the applicable notice period after notice is given in compliance with § 2912b." [*Gladych*, *supra* at 598-599.]

However, the decision in *Gladych* was given only limited retroactive effect, applying only to cases in which the specific issue was raised and preserved. *Id.* at 595.

In this case, plaintiff does not challenge the trial court's determination that, if *Gladych* applies, any claims accruing before June 14, 1999, are barred by the statute of limitations. Rather, plaintiff challenges the trial court's determination that defendant sufficiently "raised and preserved" this specific issue such that *Gladych* may be applied retroactively.

We agree that mere reliance on boilerplate language asserting a general statute of limitations defense is insufficient to preserve a specific statute of limitations challenge predicated on the failure to comply with the provisions of MCL 600.5856. *Collins v Comerica Bank*, 469 Mich 1223, 1223-1224; 668 NW2d 357 (2003). Here, however, in addition to raising a general statute of limitations defense in its filed affirmative defenses, defendant also responded to plaintiff's request to clarify this affirmative defense by asserting that it had not been served with plaintiff's complaint until significantly later than the February 12, 2002, filing date, and that the limitation period was not tolled until the complaint was "in the hands of an officer for immediate

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[2] The statute was amended, effective April 22, 2004. Under the amended statute, the limitations period is tolled at the time the complaint is filed so long as the defendant is served "within the time set forth in the supreme court rules." 2004 PA 87. However, the amendment only applies to actions filed on or after its effective date and, therefore, does not apply here.

service."[3] This response sufficiently raised and preserved the specific question of compliance with the provisions of MCL 600.5856. Therefore, the trial court properly applied *Gladych* to this case, such that any claims arising more than three years before June 14, 2002, were barred by the statute of limitations.

Plaintiff next argues that the trial court erred in granting summary disposition of her remaining claims for sex discrimination, hostile work environment, and retaliation pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). We disagree.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *MacDonald, supra* at 332. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff did not establish a prima facie case of hostile work environment sexual harassment. *Haynie v Dep't of State Police,* 468 Mich 302, 307-308; 664 NW2d 129 (2003). Plaintiff acknowledged that no unwelcomed sexual advances or requests for sexual favors took place. The evidence also established that plaintiff did not personally observe some of the conduct alleged in her complaint, and that defendant was not notified about other conduct. An employer must be given notice of alleged harassment before it can be held liable for not taking action. *Chambers v Trettco, Inc,* 463 Mich 297, 312; 614 NW2d 910 (2000). Additionally, when plaintiff complained about pornographic materials in a work area outside her section, defendant responded almost immediately with remedial action to have the materials removed. An employer may avoid liability if it adequately investigated complaints and then took prompt and appropriate remedial action upon notice of the alleged hostile work environment. *Id.* Any offensive conduct that did exist was not sufficiently persistent or severe enough to create a prima facie case of hostile work environment on the basis of sexual harassment. *Langlois v McDonald's Restaurants of Michigan, Inc,* 149 Mich App 309, 315-316; 385 NW2d 778 (1986).

Nor did plaintiff present a prima facie case of disparate treatment based on her gender. As the trial court observed, the "essence of a sex discrimination civil rights suit is that similarly situated people have been treated differently because of their sex." *Radtke v Everett,* 442 Mich 368, 379; 501 NW2d 155 (1993)(citation omitted). The evidence showed that plaintiff and men were subjected to the same conduct that plaintiff complained about. Although plaintiff testified that she was denied tools and safety equipment, and assigned to two-person jobs, and believed that she was treated differently because of her sex, she acknowledged that some men also lacked proper tools or safety equipment, and a male coworker testified that he, too, sometimes worked two-person jobs in isolated areas. Because the evidence failed to establish a genuine issue of material fact that plaintiff was treated differently than males, the trial court properly dismissed plaintiff's sex discrimination claim.

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[3] This position or argument was conveyed to plaintiff in August 2002, and *Gladych* was not decided until July 1, 2003.

Finally, the trial court did not err in granting summary disposition of plaintiff's claim of retaliation. The burden was on plaintiff to show a causal connection between her EEOC complaints and the complained-of conduct, which must constitute adverse employment action. *DeFlavis v Lord & Taylor, Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997). Again, although plaintiff testified that she felt that defendant's conduct was retaliatory, there was no objective evidence supporting this belief. The trial court did not err in granting summary disposition of plaintiff's claim of retaliation.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly